IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11144 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI RATANSING NINAMA

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Petitioner

MR SAMIR DAVE, ASSTT. GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

1. This petition is directed by the petitioner detenu under Article 226 of the Constitution of India against the order dated 16th September, 2000 of District

Magistrate, Dahod, under which he was ordered to be detained as a dangerous person, in exercise of the powers conferred under Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985.

2. This petition was admitted on 20th of October, 2000 and more than 3 months have already been passed but none of the respondents has cared to file reply thereto. The consequences of non-filing of the reply to the Special Civil Application is well-known i.e. the averments made by the petitioner in the petition stand uncontroverted and are tobe taken to be correct.

3. Challenging the legality, propriety and correctness of the order dated 16th September, 2000, the learned Counsel for the petitioner raised manifold contentions, but as this petition deserves acceptance only on one ground, it is not necessary, nor advisable in the larger interest of saving of valuable and precious judicial time of the Court, to refer to those all contentions, consider and decide. It is contended that the last criminal complaint was registered against the petitioner on 22.3.2000, whereas this detention order has been made on 16th September, 2000 i.e. after more than 5 months and 15 days. For this delay in passing of this order, the respondents have not furnished any explanation whatsoever. Summing up his contention, the learned Counsel for the petitioner argued that only on this ground the order of the respondent under which the petitioner was ordered to be detained as a dangerous person, deserves to be quashed and set aside. In support of his this contention, the learned Counsel for the petitioner made reference to certain decisions of this Court also. However, as the learned Counsel for the respondent has not raised any contention in respect of the law laid down by this Court in the decisions on which reliance is placed by the learned Counsel for the petitioner, it is not necessary to give details of those decisions also.

4. The learned Counsel for the respondent though supported the order of the detaining authority, is unable to furnish any explanation for this unreasonable delay which is there in passing of the impugned order, from the date of last criminal case registered against the petitioner. This delay has to be explained by the respondent. Delay itself may not be a ground for acceptance of the writ petition in a detention matter which is made in passing of the order counting from the date of the last criminal case registered. Each case has to be decided on its own facts and where the delay is

explained to the satisfaction of the Court, then same may not be fatal to the case. In the case in hand, the respondents have not furnished any explanation for this long delay in passing of the order of detention of the petitioner and this grievance made by the petitioner deserves acceptance.

In a matter like the present one where the respondents did not care to explain the delay even having the sufficient opportunities, I am constrained to observe that there seems to be all possibility that the detaining authority left deliberately serious lapses in the order so that the petitioner detenu may not have any difficulty to get himself released of this detention order. The illegalities which are being committed in passing of the detention order by the authority are of a minor nature, if we look into the matter with the eyes of the detaining authority. If the detaining authority is serious in the matter and takes a little trouble to properly go through the papers, there may not be any difficulty in its ways to pass a legal order of detention of the person concerned. However, where the detaining authority passes detention orders only for the satisfaction of statistical datas and not for the enforcement of Gujarat Prevention of Anti-social Activities Act, 1985, these lacunae are to be left out in the orders so that the detenu may have an easy assail in the Court. What it is said aforesaid is correct, certainly it is a fraud on the Statute. Not only this, but an attempt on the part of the detaining authority is to be-fool the public. They are giving out to the public statistical datas of the orders of detention which are being made from time to time, but public is unaware of the lacunae which are deliberately left out while making the orders of detention. A question does arise whether the officers of the State of Gujarat an impersonal machinery are honestly and effectively enforcing the provisions of this Act for the benefit of the public at large? An obvious reply may be in negative even of a man of ordinary prudence. It is unfortunate that the Government officers and the employees are more concerned with their rights and privileges, but unfortunately they are not being taught for the corresponding duties which they owe to the people. This casual, mechanical and callous approach of the detaining authority in PASA matters, would certainly render this Act ineffective in fact and substance. In the result, this petition is allowed. The order of detention of the petitioner dated 16.9.2000 is quashed and set aside. The petitioner Bharatbhai Ratansinh Ninama, the detenu, at present in District Jail, Bhavnagar be set at liberty forthwith, if he is not

required in any other case. Rule is made absolute. No order as to costs.

---

*/Mohandas